IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3396 of 2005

Between:

R.Madhusudhan Reddy, S/o.R.Rami Reddy,
R/o.H.No.7-1-659, Mankamma Thota,
Karimnagar.

..... PETITIONER

AND

1 The Engineer-in-Chief (R&B), Administration & NABARD, Erram Manzil, Hyderabad.
2 The Superintending Engineer (R&B), R&B Circle Kurnool.

3. M/s Uma Sankar Constructions, rep. by its Managing Partner, A.V. Prashant Reddy s/o Umasankar Reddy, aged about 27 years r/o Mulakalacheruvu Post and Mandal, Chittoor District.

(3rd respondent impleaded vide Court order dated 4.3.2005 in WPMP 5788 of 2005 in W.P. 3396 of 2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction or particularly one in the nature of writ of Mandamus, declaring the action of the respondents in not opening the price bid of the petitioner for the work under Notification NIT No.C.E.(R&B) NABARD/206/2004-05 dt.18-01-2005 issued by the first respondent by dis-qualifying the petitioner in technical bid behind the back of the petitioner on untenable grounds without seeking clarification as required under tender conditions, by colluding with the other tenderers for ulterior reasons, even though petitioner is fully qualified and submitted all the required documents, as illegal, unwarranted, violative of Article 14, 19, 21 and 300 A of Constitution of India and consequently direct the respondents to open the price bid of the petitioner forthwith and consider the case of the petitioner along with other

tenderers for awarding the contract and pass such other order or orders.

Counsel for the Petitioner: MR.K.RATHANGA PANI REDDY

Counsel for the Respondents 1 & 2: GP FOR ROADS & BUILDINGS

Counsel for the Respondent No.3: Mr. C.V. Nagarjuna Reddy

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 3396 of 2005

O R D E R:

The present writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not opening the price bid of the petitioner for the work under Notification NIT No.C.E. (R&B) NABARD/206/2004-2005 dated 18.1.2005 issued by the 1st respondent by disqualifying the petitioner in technical bid as illegal and arbitrary.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner submitted tender schedules through E-procurement on 9.2.2005 in pursuance of the tender notification issued by the 1st respondent dated 18.1.2005. As per the tender notification the respondents have to open the financial bid on 14.2.2005 but they have opened it on 21.2.2005 at 4 p.m. To the shock and surprise of the petitioner, his financial bid was not opened on the ground that he has not qualified in the technical bid. When he made enquiry as to why the respondents have not sought for clarification, they gave evasive reply. According to the petitioner, he has submitted not only the certificate issued by the Executive Engineer but also the declaration on non-judicial stamp worth

Rs.100/- along with supporting documents of lease deed etc. He further contended that the respondents informed him that the certificate issued by the Executive Engineer, sent by the petitioner along with other documents through E-procurement is not received by them and they received declaration on non-judicial stamp along with lease deed. Due to technical/server problem certificate issued by the Executive Engineer seems to have been not updated along with his tender schedules and documents. However, declaration on non-judicial stamp along with proof of documents was updated which is sufficient condition. The respondents in collusion with other tenderers rejected his tender without following their own tender conditions. If any clarification with regard to technical bid was required, the respondents should have sought clarification from him but they have not done so and they have not communicated about the rejection of his technical bid. Hence the present writ petition.

The 2nd respondent filed counter stating that the petitioner has not uploaded the proof of document evidence in support of ownership of the lessee i.e. M/s Sri Priya Constructions. Thus he has not satisfied nor fulfilled the NIT condition 13.C and therefore there is no necessity to call for clarification from the tenderer which is a pre-qualification criteria for opening of price bid. The petitioner has not uploaded the certificate issued by the Executive Engineer and the allegation of the petitioner that it was not uploaded due to technical/server problem is not correct. The allegation that the department has colluded with the other tenderers is far from truth. The disqualification is based on the qualification criteria stipulated to the tenders in the online tender document. Seeking for any clarification will arise only if there is any additional information required or any doubt on the already uploaded documents through ‘e’ procurement. Hence, as the tenderer has not submitted the initially required document, calling for clarification on the certificate not uploaded originally at the time of tender submission, does not arise. Hence the 2nd respondent prays to dismiss the writ petition.

The 3rd respondent has got impleaded vide WPMP 5788 of 2005.

It is contended by the learned counsel for the petitioner that the petitioner submitted declaration on non-judicial stamp paper worth about Rs.100/- as described in statement 'B' in support of critical equipment; that the declaration as required in statement-B of the forms of tender does not indicate about furnishing of invoice or certificate of registration of critical equipment and rejecting the tender in the technical evaluation is not in accordance with the terms and conditions of the tender notification and therefore he prays to set aside the same. The respondents ought to have sought for clarification at the time of evaluation of the technical bid as per condition No.22 of the tender notification and hence he prays to allow the writ petition.

On the other hand, learned Government Pleader for respondents 1 and 2 contended that the petitioner has not uploaded the proof of documentary evidence in support of ownership of lessee and he has not fulfilled the condition No.13.C of the NIT and therefore he was rejected. There is no need to call for any clarification from tenderer and hence he prays to dismiss the writ petition.

Learned counsel for the respondent No.3 contended that the price bid of the petitioner was not opened because he did not conform to the NIT conditions. The lowest tender of this respondent has been accepted. Hence, there are no grounds to interfere with the impugned order.

The scope of judicial review in contractual matters is very much circumscribed. The award of contract or licence, whether it is by a private party or a public body, is essentially a commercial transaction. It is well settled now that the courts can scrutinize the contracts by the Government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favouritism. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth in *Tata*

Cellular v. Union of India. After examining the entire case law, the following principles have been reduced:

> "(1) The modern trend points to judicial restraint in administrative action.
>
> (2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
>
> (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
>
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure".

Bearing the above principles in mind, it has to be seen whether the impugned order suffers from any incurable legal infirmities so as to call for interference by this court.

The 1st respondent called for the tenders vide notification dated 18.1.2005 inviting the tenders on the 'e' procurement platform for the work "improvements to the road from Km.0/0 to 10/5 of Kurnool-Bellary Road to Ulchala in Kurnool District". One of the conditions is that the tenderer has to submit either a certificate issued by the Executive Engineer or a declaration on non-judicial stamp paper worth Rs.100/- as prescribed in Statement-V along with sufficient proof of document in support of owning such as invoice/certificate of Registration of competent authority in support of the critical equipment consisting of tippers of 5.5 cum capacity 4 numbers, 80-100 KN static weight rollers 1 number, Vibrator rollers 1 number and Paver finisher 1 number.

A plain reading of the above tender condition would indicate that either a certificate by the Executive Engineer or a declaration on non-judicial stamp paper worth Rs.100/- along with the sufficient proof of documents is a necessary pre-condition for opening of the technical bid. Though it is stated by the petitioner that he submitted not only the certificate issued by the Executive Engineer but also a declaration on non-judicial stamp along with supporting documents of lease deeds etc., but he fairly admitted in the affidavit that due to technical/server problem the certificate issued by the Executive Engineer seems to have been not uploaded along with his tender schedule. However, the petitioner states, that declaration on non-judicial stamp along with proof of documents was uploaded which is sufficient s per condition No.13.C. The respondents admitted that the petitioner has uploaded the lease deed for Key and critical equipment to be hired from M/s Sai Priya Constructions but he has not uploaded the proof of document of ownership in support of lessee i.e. M/s Sai Priya Constructions. Therefore, the petitioner has not fulfilled NIT Condition No.13.C and accordingly he was disqualified. Admittedly the petitioner has submitted a declaration on non-judicial stamp paper as prescribed in Statement-V but he did not upload the documentary proof in support of owning invoice/certificate of registration from the competent

authority. Unless he produce the proof of documentary evidence in support of owning the critical equipment by M/s Sai Priya Constructions such as invoice or certificate of registration relating to the tippers, weigh rollers, vibrator rollers and paver finisher, which is a pre-requisite condition, the tender of the petitioner cannot be opened.

The contention of the learned counsel for the petitioner is that the Statement-V does not indicate for production of invoice of registration certificate. Submission of declaration is a proper compliance in pursuance of tender notification. It may be a fact that the Statement-V does not indicate about the invoice/certificate of registration but the said declaration should be accompanied by the invoice/certificate of registration of the critical equipment which is a condition precedent for opening of the technical bid. Such invoice/certificate of registration may not be necessary in case of production of certificate from the concerned Executive Engineer. Admittedly, the certificate issued by the Executive Enginer which was sent through ‘e’ procurement has not been received by the respondents 1 and 2. Only the declaration of non-judicial stamp has been received. When a declaration is to be sent, the other requirement is that it should be accompanied by invoice/certificate of registration of critical equipment. There is no averment in the affidavit to show that the petitioner sent the invoice or certificate of registration along with the declaration. Therefore, the contention of the learned counsel for the petitioner is devoid of merit. The eligibility criteria for opening of the price bid cannot be dispensed with by seeking a clarification. The clarification that can be sought under clause 22(1) would be such other information which is not a material or essential condition in the statements or documentary proof relating to technical bid. Clause 22(1) does not give authority to fill in the lacunae. In case where the bidder has not furnished the requisite certificate, the clarification could not be sought to make an invalid certificate a valid certificate.

The petitioner is bound by the conditions in the NIT and those conditions ought to have been complied with scrupulously. It is not a case of arbitrary action on the part of the respondents because it is not the case f the petitioner that the tenders of similarly situated persons have been opened in the price bid evaluation. So also it is not a case of favouritism because there is no factual foundation except alleging that the respondents in collusion with other tenderers rejecting his tender without following the tender conditions. Because the declaration is not accompanied by the invoice/certificate of registration of critical equipment which is a pre-requisite condition, the tender of the petitioner has not been opened. Therefore, the action of the respondents in rejecting the tender of the petitioner at the technical bid cannot be said to be illegal or arbitrary.

Hence, the writ petition is devoid of merit and it is accordingly dismissed.

K.C. Bhanu, J.

Date: 14--03—2005.

MVB.

Dated.14.3.2005:

After pronouncement of the judgment, the learned counsel for the petitioner brought to the notice of this court that the petitioner is murdered on 4.3.2005. The same is recorded.

14.3.2005

DSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Engineer-in-Chief (R&B), Administration & NABARD, Erram Manzil, Hyderabad.
2 The Superintending Engineer (R&B), R&B Circle Kurnool.

3. 2 C.Cs. to the G.P. for Roads & Buildings, High Court of A.P., Hyderabad (OUT).

4. 2 CD copies